

See Attachment

(11)  
7/26/01  
JRM

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK,

Plaintiff

v.

PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS, et al.,

Defendants

CIVIL ACTION NO. 1:CV-01-1163

(Judge Rambo)

(Magistrate Judge Mannion)

FILED  
HARRISBURG, PA

ORDER

JUL 25 2001  
MARY E. D'ANDREA, CLERK  
Per \_\_\_\_\_  
Deputy Clerk

Before the court is a July 9, 2001, report of the magistrate judge recommending that the captioned action be dismissed for Plaintiff's failure to exhaust administrative remedies. Plaintiff has filed objections to the report.

Plaintiff argues that while his civil rights action is filed under 42 U.S.C. § 1983, his action is being brought under the Americans with Disabilities Act -Rehabilitation Act ("ADA") and, therefore, he does not have to exhaust administrative remedies.

Pursuant to Board of Trustees of the University of Alabama v. Garrett, \_\_\_\_\_, U.S. \_\_\_, 121 S. Ct. 955 (2001), Plaintiff cannot assert an ADA claim against Commonwealth defendants. The United States Supreme Court held that the ADA does not abrogate a states' Eleventh Amendment immunity from suits for money damages under Title I of that act. Id. at 967.

Certified from the record

Date 7/25/01

Mary E. D'Andrea, Clerk

Per John S. McHugh  
Deputy Clerk

Accordingly, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Mannion, to the extent the complaint is deemed to be filed pursuant to 42 U.S.C. § 1983, for failure to exhaust administrative remedies.
- 2) To the extent the complaint is brought pursuant to the ADA, 42 U.S.C. § 12101, the complaint is dismissed for failure to state a cause of action against the Commonwealth Defendants.
- 3) Plaintiff's objection to the order of the magistrate judge denying his motion for appointment of counsel is deemed moot in light of the dismissal of this action.
- 4) Any appeal from this order will be deemed frivolous and not taken in good faith.
- 5) The Clerk of Court shall close the file.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: July 25, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

July 25, 2001

Re: 1:01-cv-01163 Wojtczak v. PA Dept of Corr.

True and correct copies of the attached were mailed by the clerk to the following:

Richard Wojtczak  
SCI-Huntingdon  
AF5977  
1100 Pike Street  
Huntingdon, PA 16654-1112

cc:		
Judge	( <input checked="" type="checkbox"/> )	Pro Se Law Clerk
Magistrate Judge	( <input checked="" type="checkbox"/> )	( <input type="checkbox"/> ) INS
U.S. Marshal	( <input type="checkbox"/> )	( <input type="checkbox"/> ) Jury Clerk
Probation	( <input type="checkbox"/> )	
U.S. Attorney	( <input type="checkbox"/> )	
Atty. for Deft.	( <input type="checkbox"/> )	
Defendant	( <input type="checkbox"/> )	
Warden	( <input type="checkbox"/> )	
Bureau of Prisons	( <input type="checkbox"/> )	
Ct Reporter	( <input type="checkbox"/> )	
Ctroom Deputy	( <input type="checkbox"/> )	
Orig-Security	( <input checked="" type="checkbox"/> )	
Federal Public Defender	( <input type="checkbox"/> )	
Summons Issued	( <input type="checkbox"/> )	with N/C attached to complt. and served by: U.S. Marshal ( <input type="checkbox"/> ) Pltf's Attorney ( <input type="checkbox"/> )
Standard Order 93-5	( <input type="checkbox"/> )	
Order to Show Cause	( <input type="checkbox"/> )	with Petition attached & mailed certified mail to: US Atty Gen ( <input type="checkbox"/> ) PA Atty Gen ( <input type="checkbox"/> ) DA of County ( <input type="checkbox"/> ) Respondents ( <input type="checkbox"/> )
Bankruptcy Court	( <input type="checkbox"/> )	
Other	( <input type="checkbox"/> )	

MARY E. D'ANDREA, Clerk

DATE: 7/25/01

BY: JKM  
Deputy Clerk